

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LEE JENKINS,

Plaintiff, No. CIV S-04-1152 MCE GGH P

vs.

J.G. ARCEO, et al.,

Defendants. ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. By order filed on December 12, 2005, plaintiff's first amended complaint was dismissed with leave granted for the filing of a second amended complaint. On June 21, 2005, plaintiff had filed an anticipatory "motion to dismiss" which requested dismissal of this action if, upon screening of his first amended complaint, the court either found the claims not cognizable under 42 U.S.C. § 1983 or "plans to suggest that another amended complaint be filed." Plaintiff's purported motion for voluntary dismissal is conditional and is, therefore, not a genuine and complete request or notice for voluntary dismissal under Fed. R. Civ. P. 41(a). Plaintiff, for example, does not address the instance of a screening which determines, as occurred in this case, that some claims are cognizable upon which plaintiff could proceed upon a modified first amended complaint (i.e., from which a number of claims and defendants have been dismissed) if

1 he elected not to file a second amended complaint. Plaintiff's defective "motion to dismiss,"  
2 filed on June 21, 2005, must be disregarded. Should plaintiff seek voluntary dismissal of his  
3 case, he must file a notice of dismissal of this action, pursuant to Fed. R. Civ. P. 41(a), without  
4 setting forth conditions.

5 IT IS SO ORDERED.

6 DATED: 12/21/05

7 /s/ Gregory G. Hollows  
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GREGORY G. HOLLOWS  
10 UNITED STATES MAGISTRATE JUDGE  
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